

Appl. No. 09/750,050
Response dated Thursday, September 23, 2004

REMARKS/ARGUMENTS

Claims 1-22 are pending.

Independent claims 1, 15 and 19 have been amended for clarity.
Consequential and clarifying amendments have been made to claims 2 and 4-9.

No new matter has been added by these amendments.

The Examiner has rejected independent Claims 1, 15 and 19, and claims 2, 4-9, 16-17 and 20, dependent thereon under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,266,395 to Liu et al. (hereinafter "Liu").

The applicant respectfully disagrees. Liu discloses a single ended method for qualifying subscriber loops. Such subscriber loops may possibly include voice frequency repeaters such as voice frequency repeater 128 exemplified in FIG. 1 of Liu. As claimed however, a subscriber loop is qualified by modeling a loop representing an existing subscriber loop, modified with at least one repeater for xDSL services and determining if the loop, as modeled, is capable of providing xDSL services. In other words, a subscriber loop is qualified by assessing if that loop could be modified with at least one additional xDSL repeater in order to provide xDSL service. Liu simply does not disclose the use of xDSL repeaters. Similarly, Liu does not disclose or suggest modeling or determining if a subscriber loop, as modified with a repeater for xDSL services, could be qualified for xDSL services, as claimed, and can therefore not anticipate independent claims 1, 15 or 19. Withdrawal of the rejection of these claims and those dependent thereon, under 35 USC 102 is respectfully requested.

The Examiner has further rejected independent claims 10 and 21, and depended claims 11-14 and 22 under 35 U.S.C. 103(a) as being obvious in view

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of Liu and US Patent No. 6,658,049 to McGhee et al. (hereinafter "McGhee"). Again, the applicant respectfully disagrees.

In order to establish that claims are obvious the Examiner must establish:
1) all claimed elements exist in the art; 2) motivation in the art to modify or combine the elements to arrive at the claimed invention; and 3) that there is a likelihood of success of making the modification or combination.

Here, it is respectfully submitted that the Examiner has failed to establish that all claimed elements exist in the cited references, or that there is a motivation to arrange those elements disclosed in the cited references to arrive at the claimed invention. Specifically, as claimed in claim 10 and 21, methods of qualifying a subscriber loop includes determining a location for a repeater on the loop to allow the loop to carry xDSL signal signals.

Again, Liu discloses a method of qualifying a subscriber loop, but does not contemplate the use of repeaters, and therefore does not contemplate determining a location of a repeater on the loop as part of the qualification process, so that the portion of the loop between the central office and the repeater qualifies for carrying xDSL signals.

McGhee merely reveals that xDSL repeaters are known. Again, McGhee does not suggest locating suitable repeater locations, as claimed.

Similarly, a motivation to combine or modify Liu to arrive at the claimed invention as suggested by the Examiner is not found in McGhee nor any other reference relied on by the Examiner. Instead, the Examiner appears to baldly take the position that it would have been obvious to one of ordinary skill in the art to modify Liu to arrive at the claim to "maximize repeater deployment by minimizing the number of repeaters/segments for a particular loop". This reason provided for such motivation is simply not found in the art applied by the

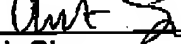
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Examiner. Instead, it appears that only the inventor of the present application has recognized any benefits of qualifying a subscriber loop by determining a location for a repeater on the loop upstream of the CO, so that a portion of said loop between the CO and the repeater qualifies for carrying xDSL signals. Any conclusion that Liu and McGhee render independent claims 10 or 21 obvious, it is submitted, is simply made with impermissible hindsight. Withdrawal of the rejection of independent claims 10 and 21, and claims 11-14 and 22 dependent thereon under 35 USC 103 is therefore respectfully requested.

In view of the foregoing favorable reconsideration and allowance of the application are earnestly solicited.

Respectfully submitted,

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